

Department of Planning, Building and Code Enforcement  
1 North First Street, Room 400  
San Jose, California 95110-1795

P.C. 6/9/04      Item: 4.b.

File Number  
CP02-019/ABC02-004

Application Type  
Conditional Use Permit

Council District  
3

Planning Area  
Central San Jose

Assessor's Parcel Number(s)  
467-31-011

# STAFF REPORT

PROJECT DESCRIPTION		Completed by: John Davidson
Location: Southeast corner of E. Santa Clara and S. Twentieth Streets.		
Gross Acreage: 0.28	Net Acreage: 0.28	Net Density: n/a
Existing Zoning: CG Commercial	Existing Use: Existing Grocery Store	
Proposed Zoning: No change	Proposed Use: Sale of alcohol for off-site consumption at an existing grocery store	
GENERAL PLAN		Completed by: JED
Land Use/Transportation Diagram Designation General Commercial with Neighborhood Business District Overlay		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING		Completed by: JED
North: Commercial	CG General Commercial	
East: Commercial	CG General Commercial	
South: Residential	R-M Multi-Family Residence	
West: Commercial	CG General Commercial	
ENVIRONMENTAL STATUS		Completed by: JED
Environmental Impact Report Negative Declaration circulated on Negative Declaration adopted on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete
DEVELOPMENT HISTORY		Completed by: JED
Inception Title: East San Jose		Date: December 1, 1911
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
Approval Approval with Conditions Denial	Date: _____	Approved by: _____ <input type="checkbox"/> Action <input type="checkbox"/> Recommendation
OWNER	APPLICANT	
Lice and Santos B. Villalba 101 Fleming Avenue San Jose, CA 95127	Montoya Enterprises 860 S. White Road San Jose, CA 95127	

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: John Davidson

Department of Public Works

None received

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Other Departments and Agencies

See attached memoranda from Police Department Vice Unit and Council Member Cindy Chavez.

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GENERAL CORRESPONDENCE

See letters of support from the Roosevelt Park Neighborhood Association, the Olinder Neighborhood Association, the East Santa Clara Street Business Association, and Joan Rivas-Cosby.

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ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Noel Montoya, proprietor of Supermercado Mexico, is requesting a Conditional Use Permit and Liquor License Exception Permit to allow the sale of alcoholic beverages for off-site consumption in conjunction with an existing Supermercado Mexico grocery store.

The site is located at the southeast corner of East Santa Clara and South Twentieth Streets (960 E. Santa Clara Street) on a 0.28 gross acre site in the CG General Commercial Zoning District. Off-sale of alcohol is allowed in the CG General Commercial District subject to the approval of a Conditional Use Permit.

The grocery store is located in the East Santa Clara Street Neighborhood Business District. The market stays open until 9:00 p.m. nightly. Commercial uses are located to the north, east, and west, and single-family residential uses are located behind the property directly to the south. The grocery store is located approximately 50 feet from the nearest residence on South Twentieth Street, is approximately 300 feet from Roosevelt Park, and less than 500 feet from San Jose High Academy.

**ENVIRONMENTAL REVIEW**

The Director of Planning has determined that under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

## GENERAL PLAN CONFORMANCE

The existing grocery store use with proposed alcohol sales is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of *General Commercial*, in that the existing supermarket is a commercial use. The current commercial use is also consistent with the East Santa Clara Street Neighborhood Business District Overlay.

## ANALYSIS

The primary project issues include conformance with the Zoning Code, land use compatibility, and conformance with the Liquor License Exception Permit requirements.

### Conformance with the Zoning Code and Land Use Compatibility

Section 20.80.900 of Title 20 of the San Jose Municipal Code specifies that a Conditional Use Permit for the off-sale of alcoholic beverages may be issued only upon making the following additional findings, where applicable:

1. For such a use at a location closer than five hundred (500) feet from any other such use situate either within or outside the City that the proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments which sell alcoholic beverages, or
2. For such a use at a location closer than five hundred (500) feet from any child care center, elementary school, secondary school, college or university, or one hundred fifty (150) feet from any residentially zoned property that the building in which the proposed use is to be located is situate and oriented in such a manner that would not adversely affect such residential and/or school use.

The Police Department has indicated that there are currently a total of nine liquor licenses for off-sale of alcohol in the census tract. Adjusting for population, the appropriate number is off-sale licenses for the census tract is four. The Police Department has indicated that there currently is an undue concentration of liquor licenses in the area, and the proposed liquor license would increase the over-concentration.

An analysis of the liquor license data shows that the off-sale licenses are concentrated along E. Santa Clara and Julian Streets, which is where the commercial zoning designations in the census tract are located. Two existing off-sale licenses are located within 600 feet of the proposed off-sale location, and a third existing location is within 2,000 feet. The closest off-sale location to the proposed site (300 feet away) is a full-service supermarket with an off-sale general license, which allows the sale of beer, wine, and spirits.

As indicated above, San Jose High Academy is located within 500 feet of the existing store, and residentially-zoned property is located within 50 feet of the store. The store's front entry is oriented towards E. Santa Clara Street, away from the adjacent residential uses. However, the walking distance from the store entry to the nearest residence is within 100 feet.

More importantly, the proposed off-sale location is within 300 feet of Roosevelt Park. Roosevelt Park is a large neighborhood park, approximately eleven acres in size, with a 1,000-foot edge along Coyote Creek. The size of the park, along with the fact that the park abuts the creek, reduces the amount of natural surveillance on the park after dark.

The proposed off-sale location is also located within 300 feet of a walk-up restaurant with outdoor seating. The restaurant operates until midnight six days a week. The fact that restaurant employees work inside the restaurant itself makes preventing loitering at the outdoor seating more difficult than if the seating were located inside the building. In staff's opinion, the location of the proposed off-sale use and the existing restaurant within close proximity of each other would have a negative effect on the surrounding neighborhood.

Based on these conditions, and the indication by the Police Department that the proposed license would result in an over-concentration of licenses, staff believes that the Supermercado Mexico store is located and oriented in such a manner that the off-sale of alcohol **would** adversely affect proximate residential and educational uses.

### **Liquor License Exception Permit**

The applicant is also applying for a Liquor License Exception Permit which is required for liquor license applicants that are denied by the Department of Alcoholic Beverage Control (ABC) pursuant to Assembly Bill (AB) No. 2897, the Caldera Bill. AB 2897 requires the ABC to deny an application for a liquor license "*if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses.*" If the ABC determines that a liquor license application would result in an undue concentration, an applicant may request an Exception Permit from the City based on "*public convenience and necessity.*"

The Planning Commission may grant the Exception Permit if it makes the following findings:

1. The premises are not located in an existing Project Crackdown /Weed and Seed Area or similar areas that qualify for these programs pursuant to the City's Neighborhood Revitalization Strategy.
2. The premises are not located within 300 feet of any public or private school.
3. The City's Police Department has determined that the use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.

The Police Department reports that the crime rate in the area is relatively low and that the site is not in a Project Crackdown area or similar strategy area. The closest public school is located over 300 feet from the project site.

The Police Department and Councilmember Chavez have issued letters of support for the issuance of an off-sale license, recognizing the applicant's successful outreach to the community, and the community's support.

Staff is aware of the goodwill that the applicant has generated in the neighborhood. Staff also understands it is a common convenience for the public to be able to purchase alcohol at a supermarket when shopping for groceries and other staples. However, with the presence another supermarket with an off-sale general license within 500 feet of the proposed site, and with an existing over-concentration of off-sale licenses in the census tract, there would appear to be ample neighborhood off-sale opportunities for the public. Therefore, the claim the requested Permit is warranted due to public convenience and necessity appears unfounded. The public benefits of permitting off-sale at the subject site do not appear to outweigh the public impacts.

## CONCLUSION

The proposed use is **not** consistent with the requirements of the Zoning Code and is **not** compatible with surrounding residential, educational, and public uses.

## RECOMMENDATION

The Planning staff recommends that the Planning Commission **deny** the requested Conditional Use Permit and Liquor License Exception Permit and include the following findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram, and is located within the General Plan-designated East Santa Clara Street Neighborhood Business District.
2. The site is located in the CG General Commercial Zoning District, which allows grocery sales as a permitted use and off-site alcohol sales subject to approval of a Conditional Use Permit.
3. The applicant proposes to offer alcoholic beverages for sale for off-site consumption.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment. The project is subject to San Jose Municipal Code Section 20.80.900, which regulates off-sale of alcohol.
5. The site **is** located closer than 500 feet from any public or private school (preschool through high school).
6. The project is located within 300 feet of a neighborhood park.
7. The project is located within 300 feet of a walk-up restaurant with outdoor seating.

8. The project is subject to the Exception Permit criteria for a liquor license for the sale of off-site alcohol sales. The project site is located in an area with an existing over-concentration of liquor licenses. The site is not located in an area with a high number of calls for police service or a high crime rate.
9. The site is not located in an existing Project Crackdown /Weed and Seed Area or in similar areas, which qualify for these programs based on the City's Neighborhood Revitalization Strategy Criteria.
10. The City's Police service investigation information (including but not limited to site-specific neighborhood analysis of calls for service) indicates the proposal would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.
11. The site is located within 50 feet of property zoned and used for residential purposes.
12. Other off-sale establishments are located in the neighborhood business district, within 500 feet of the store.
13. The walking distance from store entry to nearest residence is less than 100 feet.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed location of the off-sale of alcohol use **will contribute** to an excess concentration of establishments that sell alcoholic beverages.
3. The proposed use is located and oriented in such a manner that the off-sale of alcohol use **will adversely affect** proximate residential uses.
4. The proposed project **does not** meet the Zoning Ordinance criteria for approval for the off-site sale of alcohol.
5. The proposal does not meet the test of public convenience and necessity required of the Liquor License Exception Permit process.
6. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested **will**:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or

- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
- c. Be detrimental to public health, safety or general welfare.

This permit application is therefore **DENIED**.